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| 10/538,158   | 06/19/2006  | Andrea Ketzer          | 884A.0099.U1(US)    | 1496             |
| 29683 7590 04/30/2010<br>HARRINGTON & SMITH<br>4 RESEARCH DRIVE, Suite 202<br>SHELTON, CT 06484-6212 |             |                        |                     |                  |
| EXAMINER<br>SMITH, CHENECA   |             |                        |                     |                  |
| ART UNIT<br>2192   |             | PAPER NUMBER           |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/538,158

**Applicant(s)**

KETZER, ANDREA

**Examiner**

CHENECA SMITH

**Art Unit**

2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/19/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 6/8/2006

### **DETAILED ACTION**

This action is in response to the application filed on June 19, 2006.

Claims 1-25 have been examined.

#### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 23 recites a "data carrier." However, the specification does not clearly define or point out what this "data carrier" is intended to include in its definition.

#### ***Claim Objections***

Claim 4 is objected to because of the following informalities: Claim 4 recites "county code" at line 2. It appears that this should be "country code" and has been examined as such. However, appropriate correction is required.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-17 and 23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1, 15 and 16 all recite an "application descriptor" that has been reasonably interpreted as a computer program, software, listing per se (see e.g. page 5 lines 3-5 and lines 13-17 of the specification). Claims 1, 15 and 16 all fail to recite the "application descriptor" as stored on an **appropriate** computer readable medium, which defines structural and functional interrelationships between the software and other components of a computer that permit the software's functionality to be realized - see MPEP 2106.01(I). Therefore, claims 1, 15 and 16 are rejected as non-statutory.

Claims 2-14 mirror the deficiencies of claim 1 and are also rejected as non-statutory.

Claim 17 recites a "data structure" that has been reasonably interpreted as a computer program, software, listing per se (see e.g. page 5 lines 13-17 of the specification). Claim 17 fails to recite the "data structure" as stored on an **appropriate** computer readable medium, which defines structural and functional interrelationships between the software and other components of a computer that permit the software's functionality to be realized - see MPEP 2106.01(I). Therefore, claim 17 is rejected as non-statutory.

Claim 23 recites a "data carrier" that has not been properly defined in the specification. The United States Patent and Trademark Office (USPTO) is obliged to give claims their broadest reasonable interpretation consistent with the specification during proceedings before the USPTO. See *In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989) (during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow). The broadest reasonable interpretation of a claim drawn to a

computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent. See MPEP 2111.01.

When the broadest reasonable interpretation of a claim covers a signal *per se*, the claim must be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter. See *In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and *Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101*, Aug. 24, 2009; p. 2. Consequently, claim 23 is rejected as non-statutory.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Gibbons et al (US Patent 7,275,243 B2).

As to claim 1, Gibbons teaches an application descriptor (*i.e. web descriptor file*, see Fig.11 and associated text) describing an application available for download (see

col.16 lines 48-51 and 56-57) and comprising: a first data element (*i.e. category tag*) having a first data portion (see col.21 Table 4 line 43) a second data element (*i.e. web descriptor tag*) identifying the application (see col.21 Table 4 line 42) and a plurality of third data elements (*i.e. display-name, short-desc, long-desc* see col.21 Table 4), each of which has an individual locale identifier portion (*i.e. locale*, see Table 4 line 47) and a second data portion related to its individual locale identifier portion (see col.21 lines 59-64 and col.22 lines 1-5).

As to claim 2, Gibbons teaches an application descriptor as claimed in claim 1, wherein an individual locale identifier portion identifies a country and/or a language (see Fig.11 and associated text, e.g. col.21 Table 4 lines 45-46 and col.22 lines 8-10).

As to claim 3, Gibbons teaches an application descriptor as claimed in claim 1, wherein the individual locale identifier portion comprises or identifies at least a language code (see Fig.11 and associated text, e.g. col.21 Table 4 lines 45-46 and col.22 lines 8-10).

As to claim 4, Gibbons teaches an application descriptor as claimed in claim 1, wherein the individual locale identifier portion comprises or identifies a county code (see Fig.11 and associated text, e.g. col.21 Table 4 lines 45-46 and col.22 lines 8-10).

As to claim 5, Gibbons teaches an application descriptor as claimed in claim 1, wherein the individual locale identifier portion comprises a first two-letter code in lower case separated from a second two-letter code in upper case (see Fig.11 and associated text, e.g. col.21 Table 4 lines 45-46 and col.22 lines 8-10).

As to claim 6, Gibbons teaches an application descriptor as claimed in claim 5, wherein the first two-letter code is a language code in accordance with ISO-639 and the second two-letter code is a country code in accordance with ISO-3186 (see Fig.11 and associated text, e.g. col.21 Table 4 lines 45-46 and col.22 lines 8-10).

As to claim 7, Gibbons teaches an application descriptor as claimed in claim 1, wherein each of the second data portions of the third data elements are a replacement for the first data portion (see Fig.11 and associated text).

As to claim 8, Gibbons teaches an application descriptor as claimed in claim 1, wherein the first data portion defines a name (*i.e. display-name*, see Table 4) and, for each of the third data elements, the second data portion defines a translation of the name into a language specified by the individual locale identifier portion of the third data element (see col.21 lines 59-60 and col.22 lines 1-2 and 8-10).

As to claim 9, Gibbons teaches an application descriptor as claimed in claim 1, wherein the application descriptor is a Java application descriptor (see Fig.7 and associated text), the first data element comprises the value of the MIDlet-Name attribute of the Java Application Descriptor (*i.e. resource-id*, see Table 2 lines 12), the second data element comprises the value of the MIDlet-Jar-URL attribute of the Java Application Descriptor (*i.e. content-URL*, see Table 2 line 13) and, for each of the third data elements, the second data portion defines a translation of the name defined by the value of the MIDlet-Name attribute into a language specified by the individual locale identifier portion (*i.e. locale*, see Table 2) of the third data element (see col.18 lines 29-32).

As to claim 10, Gibbons teaches an application descriptor as claimed in claim 6, wherein the application descriptor further comprises: a fourth data element having a third data portion and a plurality of fifth data elements, each of which has an individual locale identifier portion (*i.e. locale*, see Table 4) and a third data portion related to its individual identifier portion (see col.21 lines 59-64 and col.22 lines 1-5).

As to claim 11, Gibbons teaches an application descriptor as claimed in claim 10, wherein the fourth data element is the value of the attribute for the name of a MIDlet (*i.e. resource-id*, see Table 2 lines 12) and, for each of the fifth data elements, the third data portion defines a translation of the name of the MIDlet into a language specified by the individual locale identifier portion (*i.e. locale*, see Table 2) of the third data element (see col.18 lines 29-32).

As to claim 12, Gibbons teaches an application descriptor as claimed in claim 1, wherein the application descriptor is a Java application descriptor (see col.18 lines 35-37), the first data element comprises the value of the attribute for the name of a MIDlet (see col.18 lines 35-37), the second data element comprises the value of the MIDlet-Jar-URL attribute of the Java Application Descriptor (see col.18 lines 37-39) and, for each of the third data elements, the second data portion defines a translation of the name of the MIDlet into a language specified by the individual identifier portion (*i.e. locale*, see Table 2) of the third data element (see col.21 lines 59-64 and col.22 lines 1-5).



As to claim 13, Gibbons teaches an application descriptor as claimed in claim 1 wherein the first data portion defines an icon and the second data portion of the third data element defines a replacement icon (see col.22 lines 5-8).

As to claim 14, Gibbons teaches an application descriptor as claimed in claim 1 wherein the first data portion defines a start routine and the second data portion of the third data element defines a replacement start routine (see vol.18 lines 37-39).

As to claim 15, Gibbons teaches an application descriptor (*i.e. web descriptor file*, see Fig.11 and associated text) describing an application resource available for download (see col.16 lines 48-51 and 56-57) and comprising: a first attribute (*i.e. category tag*) having a first value (see col.21 Table 4 line 43), a second attribute (*i.e. web descriptor tag*) having a value identifying the application resource (see col.21 Table 4 line 42), a plurality of third attributes (*i.e. display-name, short-desc, long-desc* see col.21 Table 4), each of which has an individual locale identifier portion (*i.e. locale*, see Table 4 line 47) and a second value related to its respective locale identifier portion (see col.21 lines 59-64 and col.22 lines 1-5).

As to claim 16, Gibbons teaches an application descriptor (*i.e. web descriptor file*, see Fig.11 and associated text) describing an application resource available for download and comprising: a first attribute having a first value defining a first name (*i.e. display-name*, see Table 4) a second attribute having a value identifying the application resource (*i.e. web-descriptor*, see Table 4) and a plurality of third attributes (*i.e. display-name, short-desc, long-desc*, see col.21 Table 4), each of which has an individual locale identifier portion (*i.e. locale*, see Table 4 line 47) and has a second value defining a

translation of the first name into a language identified by its individual locale identifier portion (see col.21 lines 59-64 and col.22 lines 1-5).

As to claim 17, Gibbons teaches a data structure (see Fig.5 and associated text) for transmission and reception by a wireless transceiver, comprising an application descriptor as claimed in claim 1 (see col.16 lines 48-51).

As to claim 18, Gibbons teaches a mobile telephone (see Fig.1, 110 and associated text) arranged to receive and process a data structure as claimed in claim 17, comprising a transceiver for receiving the data structure (see col.11 lines 20-23), means for determining an identifier associated with the phone or the phone user (see col.20 lines 14-15) and means for selecting the second data portion of a third data element having an individual identifier portion corresponding to the determined identifier associated with the phone or it's user (see col.20 lines 25-26).

As to claim 19, Gibbons teaches a mobile telephone as claimed in claim 18 wherein the means for determining an identifier includes means for invoking the `getProperty( )` method (see col.20 lines 14-15).

As to claim 20, Gibbons teaches a mobile telephone as claimed in claim 18, wherein the identifier comprises at least one country code (see col.19 Table 3 line 10).

As to claim 21, Gibbons teaches a mobile telephone as claimed in claim 18, wherein the identifier is dependent upon the language setting of the mobile telephone (see col.19 Table 3 line 14).

As to claim 22, Gibbons teaches a mobile telephone as claimed in claim 18, arranged to receive the data structure using the Wireless Application Protocol (see col.10 lines 63-67).

As to claim 23, Gibbons teaches a memory device (see Fig.1 and associated text) or data carrier storing an application descriptor as claimed in claim 1 (see col.11 lines 22-23).

As to claim 24, Gibbons teaches a mobile telephone (see Fig.1,110 and associated text) arranged to process an application descriptor (*i.e. web descriptor file*, see Fig.11 and associated text) comprising a first data element (*i.e. category tag*) having a first data portion (see col.21 Table 4 line 43) a second data element (*i.e. web descriptor tag*) identifying the application (see col.21 Table 4 line 42) and a plurality of third data elements (*i.e. display-name, short-desc, long-desc* see col.21 Table 4), each of which has an individual locale identifier portion (*i.e. locale*, see Table 4 line 47) and a second data portion related to its individual locale identifier portion (see col.21 lines 59-64 and col.22 lines 1-5). the mobile telephone comprising means for determining a locale identifier associated with the phone or the phone user (see Table 3- country code and language code) and means for selecting the second data portion of a third data element having an individual locale identifier portion corresponding to the determined locale identifier associated with the phone or it's user (see col.17 lines 6-13 and col.18 lines 60-67).

As to claim 25, Gibbons teaches a computer (see Fig.1 and associated text, e.g. col.6 lines 57-61) for storing an application descriptor (*i.e. web descriptor file*, see Fig.11

and associated text) as describing an application available for download (see col.16 lines 48-51 and 56=57) and comprising: a first data element (*i.e. category tag*) having a first data portion (see col.21 Table 4 line 43) a second data element (*i.e. web descriptor tag*) identifying the application (see col.21 Table 4 line 42) and a plurality of third data elements (*i.e. display-name, short-desc, long-desc* see col21 Table 4), each of which has an individual locale identifier portion (*i.e. locale*, see Table 4 line 47) and a second data portion related to its individual locale identifier portion (see col.21 lines 59-64 and col.22 lines 1-5), operable for transmitting, receiving or processing a data structure (see col.11 lines 20-23) as claimed in claim 17.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHENECA SMITH whose telephone number is (571)270-1651. The examiner can normally be reached on Monday-Friday 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on (571)272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHENECA SMITH/  
Examiner, Art Unit 2192  
4/20/2010

/Tuan Q. Dam/  
Supervisory Patent Examiner, Art Unit 2192